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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010 - 455**

13 **HALIMAH MARTIN**
14 **aka ROSANA HARKNESS**
15 **602 Olive Springs Road**
16 **Soquel, CA 95073**
17 **Registered Nurse License No. RN 431753**
18 **Nurse Midwife License No. NMW 1314**

ACCUSATION

Respondent.

19 Complainant alleges:

PARTIES

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered
24 Nurse License Number RN 431753 to Halimah Martin ("Respondent"). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on May 31, 2010, unless renewed.

27 3. On or about April 9, 1998, the Board of Registered Nursing issued Nurse Midwife
28 License Number NMW 1314 to Respondent, Halimah Martin. The Nurse Midwife License was

1 in full force and effect at all times relevant to the charges brought herein and will expire on May
2 31, 2010, unless renewed.

3 JURISDICTION

4 4. This Accusation is brought before the Board of Registered Nursing ("Board"),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
8 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
13 licensee or to render a decision imposing discipline on the license.

14 STATUTORY AND REGULATORY PROVISIONS

15 7. Section 2761 of the Code states:

16 "The board may take disciplinary action against a certified or licensed nurse or deny an
17 application for a certificate or license for any of the following:

18 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

19 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
20 functions.

21 ...

22 8. Article 2.5 of Chapter 6 of the Nursing Practice Act, Code section 2746.1 governing
23 Nurse-Midwives provides in relevant part that "[e]very applicant for a certificate to practice
24 nurse-midwifery shall comply with all the provisions of this article in addition to the provisions of
25 this chapter."

26 9. Article 2.5 of Chapter 6 of the Nursing Practice Act, Code section 2746.5,
27 subdivision (b) states:

1 "As used in this chapter, the practice of nurse-midwifery constitutes the furthering or
2 undertaking by any certified person, under the supervision of a licensed physician and surgeon
3 who has current practice or training in obstetrics, to assist a woman in childbirth so long as
4 progress meets criteria accepted as normal. All complications shall be referred to a physician
5 immediately. The practice of nurse-midwifery does not include the assisting of childbirth by any
6 artificial, forcible, or mechanical means, nor the performance of any version."

7 10. California Code of Regulations, title 16, section 1442, states:

8 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
9 the standard of care which, under similar circumstances, would have ordinarily been exercised by
10 a competent registered nurse. Such an extreme departure means the repeated failure to provide
11 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
12 situation which the nurse knew, or should have known, could have jeopardized the client's health
13 or life."

14 11. California Code of Regulations, title 16, section 1443, states:

15 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
16 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
17 exercised by a competent registered nurse as described in Section 1443.5."

18 COST RECOVERY

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 FACTUAL BACKGROUND

24 13. Respondent, a Certified Nurse-Midwife did at all relevant times co-own a home birth
25 practice called Labor of Love Midwifery, in Santa Cruz, California. Her practice included the
26 providing pre-natal and home delivery services for qualifying clients.

27 14. The supervising obstetrician for Respondent's home birth practice was at all relevant
28 times, Dr. Alexandra Klikoff. In accord with Code section 2746.5, the practice guidelines for

1 Labor of Love Midwifery detailed specific conditions during labor that required physician
2 consultation and/or transfer to a hospital. One such condition was fetal distress. Under the
3 heading of "Specific Problems," Respondent's practice guidelines provided that: "OB consult
4 and consideration of hospital transport is initiated under the following conditions: (b) Fetal
5 distress as indicated by fetal heart tone abnormalities which do not respond to changes in
6 maternal position, hydration, or other measures commonly employed at home. . ."

7 15. On or about May 23, 2006, Respondent accepted Patient A into her practice. Patient
8 A was 28 years old and pregnant with her first child and had an estimated due date of December
9 8, 2006.

10 16. On her due date, patient A went into labor. Respondent and her partner, Certified
11 Nurse-Midwife Sylvia Bortin arrived at her home on the morning of December 8, 2006. At
12 approximately 3:00 p.m., patient A was completely dilated and began pushing. The fetal heart
13 rate from 10:00 a.m. to 4:00 p.m., ranged between 120 to 140 beats per minute.¹

14 17. At 4:00 p.m., patient A's baby had a severe and profound bradycardia, with its heart
15 rate dropping to 30 to 40 beats per minute for 10 minutes. The bradycardia did not improve by
16 the various maneuvers attempted by respondent, which included changing the maternal position,
17 pushing up on the baby's head and an attempt to manually extract the baby.

18 18. Five minutes into the bradycardia a call was placed to 911 by Sylvia Borton.² The
19 911 request for an ambulance was subsequently cancelled as respondent reported that the fetal
20 heart rate had recovered to 120 beats per minute. With this recovery in the fetal heart rate, there
21 was no concomitant documentation of the maternal heart rate. There was no reference that
22 supervising obstetrician, Dr. Alexandra Klikoff had been notified of the fetal bradycardia.

23 19. At 4:15 p.m., paramedics arrived at patient A's home. Respondent repeated that their
24 assistance was no longer needed. Due to a concern regarding the duration and severity of the

25
26 ¹ A normal fetal heart rate is between 110 to 160 beats per minute in a term gestation.

27 ² Santa Cruz Consolidated Emergency Communication Center dispatch records indicated
28 that the 911 call regarding patient A came in at 16:09:27 (4:09 p.m.), nine minutes after the start
of the fetal bradycardia.

1 fetal bradycardia and/or potential complications, the paramedics requested to stay on the scene
2 until patient A's child was delivered and/or a decision was made for hospital transport.

3 20. At 4:30 p.m., patient A was still undelivered. Respondent then decided to proceed
4 with the transport. The fetal heart rate was at this time reported to be between 120 to 160 beats
5 per minute. There was no documentation of the maternal heart rate. Respondent's supervising
6 obstetrician Dr. Klikoff was notified of the need for transport.

7 21. When at 4:40 p.m., patient A was being placed in the ambulance, the fetal heart rate
8 was noted to be 80 beats per minute. En route to the hospital, respondent lost fetal heart tones.

9 22. Patient A arrived at Dominican Hospital in Santa Cruz at 5:30 p.m. The external fetal
10 heart monitor displayed a "fetal heart rate" between 100 and 110 beats per minute, which was
11 determined to be that of patient A. An ultrasound confirmed that patient A's baby was dead.

12 23. Pursuant to the request of patient A, an emergency cesarean section was performed.
13 At 6:02 p.m., a stillbirth female weighing 7 pounds, 5 ounces was delivered.

14 FIRST CAUSE FOR DISCIPLINE

15 (Gross Negligence)

16 24. Respondent is subject to disciplinary action for gross negligence under Code section
17 2761, subdivision (a)(1), in that she failed to immediately transport a pregnant client to the
18 nearest hospital in response to a severe and prolonged fetal bradycardia, as set forth above in
19 paragraphs 15 through 23.

20 SECOND CAUSE FOR DISCIPLINE

21 (Gross Negligence and/or Incompetence)

22 25. Respondent is subject to disciplinary action for gross negligence and/or incompetence
23 under Code section 2761, subdivision (a)(1), in that after a severe fetal bradycardia lasting for ten
24 minutes, she failed to then distinguish if the "recovered" heart rate was fetal or instead maternal
25 as set forth above in paragraphs 15 through 23.

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1. THIRD CAUSE FOR DISCIPLINE

2. (Unprofessional Conduct)

3. 26. Respondent is subject to disciplinary action for unprofessional conduct under Code
4. sections 2761, subdivision (a) and 2746.5, in that she failed to immediately consult with her
5. supervising obstetrician when presented with a severe and prolonged fetal bradycardia as set forth
6. above in paragraphs 14 through 18.

7. PRAYER

8. WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9. and that following the hearing, the Board of Registered Nursing issue a decision:

10. 1. Revoking or suspending Registered Nurse License Number RN 431753, issued to
11. Halimah Martin.
12. 2. Revoking or suspending Nurse Midwife License Number NMW 1314, issued to
13. Halimah Martin.
14. 3. Ordering Halimah Martin to pay the Board of Registered Nursing the reasonable costs
15. of the investigation and enforcement of this case, pursuant to Business and Professions Code
16. section 125.3;
17. 4. Taking such other and further action as deemed necessary and proper.

18. DATED: 3/18/10

19. *Louise R. Bailey*
20. LOUISE R. BAILEY, M.ED., RN
21. Interim Executive Officer
22. Board of Registered Nursing
23. Department of Consumer Affairs
24. State of California
25. Complainant

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